

CHILD CARE ORGANIZATIONS

Act 116 of 1973

AN ACT to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of the department of social services and adoption facilitators; to provide penalties; and to repeal certain acts and parts of acts.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1994, Act 209, Eff. Jan. 1, 1995.

The People of the State of Michigan enact:

722.111 Definitions.

Sec. 1. As used in this act:

(a) "Child care organization" means a governmental or nongovernmental organization having as its principal function the receiving of minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Child care organization includes organizations commonly described as child caring institutions, child placing agencies, children's camps, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes or day care homes. Child care organization does not include a governmental or nongovernmental organization that does either of the following:

(i) Provides care exclusively to minors who have been emancipated by court order pursuant to section 4(3) of Act No. 293 of the Public Acts of 1968, being section 722.4 of the Michigan Compiled Laws.

(ii) Provides care exclusively to persons who are 8 years of age or older and to minors who have been emancipated by court order pursuant to section 4(3) of Act No. 293 of the Public Acts of 1968 at the same location.

(b) "Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers who are minors and an agency group home, which is described as a small child caring institution owned, leased, or rented by a license agency providing care for more than 4 but less than 3 minor children. Child caring institution also includes institutions for mentally retarded or emotionally disturbed minor children. Child caring institution does not include a hospital, nursing home, or home for the aged licensed under article 7 of the public health code, Act No. 368 of the Public Acts of 1978, as amended, being sections 333.2010 to 333.22260 of the Michigan Compiled Laws, a boarding school licensed under section 1335 of the school code of 1976, Act No. 451 of the Public Acts of 1976, being section 380.1335 of the Michigan Compiled Laws, a hospital or facility operated by the state or licensed under the mental health code, Act No. 258 of the Public Acts of 1978, as amended, being sections 330.1000 to 330.1009 of the Michigan Compiled Laws.

1974, as amended, being sections 330.1001 to 330.2106 of the Michigan Compiled Laws, or an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being sections 400.701 to 400.737 of the Michigan Compiled Laws, in which a child has been placed pursuant to section 5(6).

(c) "Child placing agency" means a governmental organization or an agency organized pursuant to the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.210 to 450.3192 of the Michigan Compiled Laws, for the purpose of receiving children for their placement in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation of applicants for adoption and the investigation and certification of foster family homes and foster family group homes as provided in this act. The function of a child placing agency may also include the supervision of children who are 6 or 7 years of age and who are living in unlicensed residences as provided in section 5(4).

(d) "Children's camp" means a residential, day, troop, or travel camp conducted in a natural environment for more than 4 school age children, apart from their parents, relatives, or legal guardians, for 5 or more days in a 4-day period. A children's camp provides care and supervision for the same group of children for usually not more than 2 weeks.

(e) "Child care center" or "day care center" means a facility, other than a private residence, receiving or more preschool or school age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center or day care center includes a facility that provides care for not less than 2 consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center. Child care center or day care center does not include any of the following:

(i) A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are in attendance for not more than 3 hours per day for an indefinite period, or not more than 8 hours per day for a period not to exceed 4 weeks during a 2-month period.

(ii) A facility operated by a religious organization where children are cared for not more than 3 hours while persons responsible for the children are attending religious services.

(f) "Private home" means a private residence in which the licensee or registrant permanently resides as a member of the household, which residency is not contingent upon caring for children or employment by a licensed or approved child placing agency. Private home includes a full-time foster family home, a full-time foster family group home, a group day care home, or a family day care home, as follows:

(i) "Foster family home" is a private home in which but not more than 4 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household pursuant to the adoption code, chapter X of Act No. 288 of the Public Acts of 1939,

being sections 710.21 to 710.70 of the Michigan Compiled Laws, are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

(ii) "Foster family group home" means a private home in which more than 4 but fewer than 7 minor children, who are not related to an adult member of the household by blood or marriage, or who are not placed in the household pursuant to chapter X of Act No. 288 of the Public Acts of 1939, are provided care for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

(iii) "Family day care home" means a private home in which but fewer than 7 minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Family day care home includes a home that gives care to an unrelated minor child for more than 4 weeks during a calendar year.

(iv) "Group day care home" means a private home in which more than 6 but not more than 2 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group day care home includes a home that gives care to an unrelated minor child for more than 4 weeks during a calendar year.

(g) "Licensee" means a person, partnership, firm, corporation, association, nongovernmental organization, or local or state government child care organization that has been issued a license to operate a child care organization.

(h) "Provisional license" means a license issued to a child care organization that is temporarily unable to conform to all of the rules promulgated under this act.

(i) "Regular license" means a license issued to a child care organization indicating that the organization is in compliance with all rules promulgated under this act.

(j) "Guardian" means the guardian of the person.

(k) "Minor child" means any of the following:

(i) A person less than 8 years of age.

(ii) A person who is a resident in a child caring institution, children's camp, foster family home, or foster family group home; who becomes 8 years of age while residing in the child caring institution, camp, or home; and who continues residing in the institution, camp, or home to receive care, maintenance, training, and supervision. This subparagraph applies only if the number of those residents who become 8 years of age does not exceed the following:

(A) Two, if the total number of residents is 0 or fewer.

(B) Three, if the total number of residents is not less than 11 and not more than 14.

(C) Four, if the total number of residents is not less than 5 and not more than 20.

(D) Five, if the total number of residents is 21 or more.

(iii) A person 8 years of age or older who is placed in a foster family home under section 5(7).

(l) "Registrant" means a person who has been issued a certificate of registration to operate a family day care home.

(m) "Registration" means the process by which the department of social services regulates family day care homes, which process requires that a family day care home certify to the department that the family day care home has complied with and will continue to comply with the rules promulgated under this act.

(n) "Certificate of registration" means a written document issued to a family day care home through registration.

(o) "Related" means a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, aunt, cousin, great aunt, great uncle, or stepgrandparent related by marriage, blood, or adoption.

(p) "Religious organization" means church, ecclesiastical corporation, or group, not organized for pecuniary profit, that gathers for mutual support and edification in piety or worship of a supreme deity.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1978, Act 438, Imd. Eff. Oct. 5, 1978;--Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;--Am. 1980, Act 232, Imd. Eff. July 20, 1980;--Am. 1980, Act 510, Imd. Eff. Jan. 26, 1981;--Am. 1981, Act 126, Imd. Eff. July 23, 1981;--Am. 1984, Act 139, Imd. Eff. June 1, 1984;--Am. 1991, Act 162, Imd. Eff. Dec. 9, 1991;--Am. 1994, Act 205, Eff. Jan. 1, 1995.

Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v. Emmanuel Baptist Preschool, 434 Mich. 380, 455 N.W.2d 1(1990).

722.111a Concurrent licensing as adult foster care family home; additional children; combined licensed capacity; definitions.

Sec. 1a. (1) A private residence licensed as a foster family home or foster family group home may be concurrently licensed as an adult foster care family home. Additional children not related to a resident of the foster family home or foster family group home shall not be received in

the foster family home or foster family group home after the filing of an application for an adult foster care family home license.

(2) A child caring institution with a licensed capacity of 6 or fewer residents may be concurrently licensed as an adult foster care small group home. Additional children not related to a resident of the child caring institution shall not be received in the child caring institution after the filing of an application for an adult foster care small group home license. The combined licensed capacity shall not exceed a combination of 6 children and adults.

(3) As used in this section:

(a) "Adult foster care family home" means that term as defined in section 3 of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

(b) "Adult foster care small group home" means that term as defined in section 3 of the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being section 400.703 of the Michigan Compiled Laws.

History: Add. 1984, Act 139, Imd. Eff. June 1, 1984.

722.112 Rules; ad hoc committee; review.

Sec. 2. (1) The department of social services, hereinafter referred to as the "department", is responsible for the development of rules for the care and protection of children in organizations covered by this act and for the promulgation of these rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.20 to 24.315 of the Michigan Compiled Laws.

(2) The department shall establish an ad hoc committee for each type of child care organization as defined in this act when it is formulating or amending rules under this act. The committee shall consist of not less than 12 members, and shall include representatives of the following groups and agencies:

(a) Department of public health.

(b) Department of state police, fire marshal division and state fire safety board.

(c) Department of education.

(d) Department of mental health.

(e) Representatives of organizations affected by this act.

(f) Parents of children affected by this act.

The representatives of organizations affected by this act and parents of children affected by this act shall constitute a majority of the committee membership. The committee shall serve during the period of the formulation of rules, shall have responsibility for making recommendations on the content of rules, and shall recommend to the department revisions in proposed rules at any time before their promulgation.

(3) The rules promulgated under this act shall be restricted to:

(a) The operation and conduct of child care organizations and the responsibility the organizations assume for child care.

(b) The character, suitability, training, and qualifications of applicants and other persons directly responsible for the care and welfare of children served.

(c) The general financial ability and competence of applicants to provide necessary care for children and to maintain prescribed standards.

(d) The number of individuals or staff required to insure adequate supervision and care of the children received.

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate fire prevention and health standards to provide for the physical comfort, care, and well being of the children received. However, the rules with respect to fire prevention and fire safety shall not apply to a child care center established and operated by an intermediate school board, the board of a local school district, or by the board or governing body of a state approved nonpublic school, if the child care center is located in a school building that is approved by the state fire marshal or other similar authority as provided in section 3 of Act No. 306 of the Public Acts of 1937, being section 388.853 of the Michigan Compiled Laws, for school purposes and is in compliance with the school fire safety rules, R 29.1 to R 29.298 of the Michigan administrative code, as determined by the state fire marshal or a fire inspector certified pursuant to section 2b of the fire prevention code, Act No. 207 of the Public Acts of 1941, being section 29.2b of the Michigan Compiled Laws.

(f) Provisions for food, clothing, educational opportunities, programs, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of children served.

(g) Provisions to safeguard the legal rights of children served.

(h) Maintenance of records pertaining to admission, progress, health, and discharge of children.

(i) Filing of reports with the department.

(j) Discipline of children.

(k) Transportation safety.

(4) Rules once promulgated are subject to major review by an ad hoc committee not less than once every 5 years and shall be reviewed biennially by the department. The ad hoc committee shall be established by the department, shall consist of not less than 12 members, and shall include representatives of the groups and agencies indicated in subsection (2). The ad hoc committee shall hold at least 2 public hearings regarding the review of rules and shall report its recommendations regarding rules to the appropriate committees of the legislature.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1983, Act 150, Imd. Eff. July 8, 1983.

Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v. Emmanuel Baptist Preschool, 434 Mich. 380, 455 N.W.2d 1 (1990).

Administrative rules: R 400.1 et seq.; R 400.1301 et seq.; R 400.4101 et seq.; R 400.5101 et seq.; R 400.6101 et seq.; and R 400.11101 et seq. of the Michigan Administrative Code.

722.112a Institution, center, or home; person certified in first aid and CPR; applicability of S 722.125.

Sec. 2a. (1) A child caring institution, child care center, or group day care home shall have on duty at all times while the institution, center, or home is providing care to or more children at least person who has been certified within the preceding 2 years in first aid and age-appropriate cardiopulmonary resuscitation by the American red cross or a comparable organization or institution approved by the department.

(2) Section 15 does not apply to this section.

History: Add. 1994, Act 349, Eff. Dec. 16, 1995.

722.113 Inspection of child care organizations; contract; provisional license; investigation and certification of foster family home or group home; inspection reports; final determination as to license; report of findings; license limitations.

Sec. 3. (1) The rules promulgated by the department shall be used by the department of public health, the fire marshal division of the department of state police, and local authorities in the inspection of and reporting on child care organizations covered by this act. The inspection of the health and fire safety of child care organizations shall be completed by department staff or by the department of public health, the fire marshal division of the department of state police, local authorities upon request of the department, or pursuant to subsection (2).

(2) If an inspection is not conducted pursuant to subsection (1), a person owning or operating or who proposes to own or operate a child care organization may enter a contract with a local authority or other person qualified to conduct an inspection pursuant to subsection (1) and pay for that inspection after an inspection is completed pursuant to this subsection. A person may receive a provisional license if the proposed child care organization passes the inspection, and the other requirements of this act are met.

(3) The rules promulgated by the department for foster family homes and foster family group homes shall be used by a licensed child placing agency or an approved governmental unit when investigating and certifying a foster family home or a foster family group home.

(4) Inspection reports completed by state agencies, local authorities, and child placing agencies, shall be furnished to the department and shall become a part of its evaluation for licensing of organizations covered by this act. After careful consideration of the reports and consultation where necessary, the department shall assume responsibility for the final determination of the issuance, denial, revocation, or provisional nature of licenses issued to nongovernmental organizations. A report of findings shall be furnished to the licensee. A license shall be issued to a specific person or organization at a specific location, shall be nontransferable, and shall remain the property of the department.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;--Am. 1980, Act 232, Imd. Eff. July 20, 1980.

722.113a Visitation rights; exception.

Sec. 3a. (1) A parent or legal guardian of a child at a child care center or day-care center may visit the child at the center at any time.

(2) A parent or legal guardian who wishes to enroll a child at a child care center or day-care center may visit the center prior to enrollment of the child at such times as shall be established by the center.

(3) This section shall not be construed to permit visitation with a child in violation of a court order.

History: Add. 1986, Act 140, Imd. Eff. July 1, 1986.

722.113b Smoking prohibited; "smoke" defined.

Sec. 3b. (1) An individual shall not smoke in a child caring institution or child care center or on real property that is under the control of a child caring institution or child care center and upon which the child caring institution or child care center is located, including other related buildings.

(2) As used in this section, "smoke" means that term as defined in section 260 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being section 333.12601 of the Michigan Compiled Laws.

History: Add. 1993, Act 211, Imd. Eff. Oct. 22, 1993.

722.113c Smoking on premises of family day care home during hours of operation prohibited; notice to parents of smoking during other hours; definitions.

Sec. 3c. (1) An individual shall not smoke on the premises of a family day care home during the hours of operation of the family day care home. The operator of a family day care home may permit smoking on the premises during a period other than the hours of operation of that family day care home if the operator has provided to a parent or legal guardian of each child participating in a family day care home activity notice that smoking on the premises occurs or may occur when the family day care home is not in operation.

(2) As used in this section:

(a) "Child" means an individual less than 8 years of age who is not related to an adult member of the family day care home or group day care home operator.

(b) "Smoke" and "smoking" mean those terms as defined in section 12601 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12601 of the Michigan Compiled Laws.

History: Add. 1993, Act 219, Eff. Apr. 1, 1994.

722.113d Smoking on premises of group day care home during hours of operation prohibited; posting notice; notice to parents of smoking during other hours; definitions.

Sec. 3d. (1) An individual shall not smoke on the premises of a group day care home during the hours of operation of the group day care home. The operator of a group day care home shall conspicuously post on the premises a notice which specifies that smoking on the premises is prohibited during the hours of operation of the group day care home.

(2) A group day care home operator may permit smoking on the premises during a period other than the hours of operation of that group day care home if the operator has provided to a parent or legal guardian of each child participating in a group day care home activity notice that smoking on the premises occurs or may occur when the group day care home is not in operation.

(3) As used in this section:

(a) "Child" means an individual less than 8 years of age who is not related to an adult member of the group day care home operator's family.

(b) "Smoke" and "smoking" mean those terms as defined in section 12601 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.12601 of the Michigan Compiled Laws.

History: Add. 1993, Act 218, Eff. Apr. 1, 1994.

722.114 Consultation and assistance to organizations.

Sec. 4. The department shall provide consultation to organizations covered by this act to assist them in meeting the requirements of this act and the rules promulgated under this act. The department shall offer assistance, training, and education, within fiscal limitations, upon request, in developing methods for the improvement of service.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1980, Act 232, Imd. Eff. July 20, 1980.

722.115 License or certificate of registration required; application; forms; investigations; on-site visit; issuance or renewal of license; "good moral character" defined; issuance of certificate of registration; certifying compliance, services, and facilities; orientation session; limitations on certificate; investigation and certification of foster family home or group home; placement of children in foster family home, foster family group home, unlicensed residence, adult foster care family home, or adult foster care small group home; certification; supervisory responsibility; records; exceptions.

Sec. 5. (1) A person, partnership, firm, corporation, association, or nongovernmental organization shall not establish or maintain a child care organization unless licensed or registered by the department. Application for a license or certificate of registration shall be made on forms provided, and in the manner prescribed, by the department. Before issuing or renewing a license, the department shall investigate the activities and proposed standards of care of the applicant and shall make an on-site visit of the proposed or established organization. If the department is satisfied as to the need for a child care organization, its financial stability, the good moral character of the applicant, and that the services and facilities are conducive to the welfare of the children, the department shall issue or renew the license. As used in this subsection, "good moral character" means good moral character as defined and determined pursuant to Act No. 381 of the Public Acts of 1974, being sections 338.41 to 338.47 of the Michigan Compiled Laws.

(2) The department shall issue a certificate of registration to a person who has successfully completed an orientation session offered by the department, and who certifies to the department that the family day care home has complied with and will continue to comply with the rules promulgated under this act, and will provide services and facilities, as determined by the department, conducive to the welfare of children. The department shall make available an orientation session to applicants for registration regarding this act, the rules promulgated under this act, and the needs of children in family day care before issuing a certificate of registration. The department shall issue a certificate of registration to a specific person at a specific location. A certificate of registration is nontransferable and remains the property of the department. Within 90

days after initial registration, the department shall make an on-site visit of the family day care home.

(3) The department may authorize a licensed child placing agency or an approved governmental unit to investigate a foster family home or a foster family group home pursuant to subsection (1) and to certify that the foster family home or foster family group home meets the licensing requirements prescribed by this act. A foster family home or a foster family group home shall be certified for licensing by the department by only 1 child placing agency or approved governmental unit. Other child placing agencies may place children in a foster family home or foster family group home only upon the approval of the certifying agency or governmental unit.

(4) The department may authorize a licensed child placing agency or an approved governmental unit to place a child who is 16 or 17 years of age in his or her own unlicensed residence, or in the unlicensed residence of an adult who has no supervisory responsibility for the child, if a child placing agency or governmental unit retains supervisory responsibility for the child.

(5) A licensed child placing agency, child caring institution, and an approved governmental unit shall provide the state court administrative office and a local foster care review board established under Act No. 422 of the Public Acts of 1984, being sections 722.131 to 722.139a of the Michigan Compiled Laws, such records as may be requested pertaining to children in foster care placement for more than 6 months.

(6) The department may authorize a licensed child placing agency or an approved governmental unit to place a child who is 16 or 17 years old in an adult foster care family home or an adult foster care small group home licensed under the adult foster care facility licensing act, Act No. 218 of the Public Acts of 1979, being sections 400.701 to 400.737 of the Michigan Compiled Laws, if a licensed child placing agency or approved governmental unit retains supervisory responsibility for the child and certifies to the department all of the following:

(a) The placement is in the best interests of the child.

(b) The needs of the child can be adequately met by the adult foster care family home or small group home.

(c) The child will be compatible with other residents of the adult foster care family home or small group home.

(d) The child placing agency or approved governmental unit will periodically reevaluate the placement of an individual under this subsection to determine that the criteria for placement in subdivisions (a) through (c) continue to be met.

(7) The director of the department, or his or her designee, may authorize, on an exception basis, a licensed child placing agency or an approved governmental unit to place an adult in a

foster family home, if a licensed child placing agency or approved governmental unit certifies to the department all of the following:

(a) The adult is a person with a developmental disability as defined by section 600 of the mental health code, Act No. 258 of the Public Acts of 1974, being section 330.1600 of the Michigan Compiled Laws, or a person who is otherwise neurologically handicapped, and the person is also physically limited to such a degree as to require complete physical assistance with mobility and activities of daily living.

(b) The placement is in the best interest of the adult and will not adversely affect the interest of the foster child or children residing in the foster family home.

(c) The identified needs of the adult can be met by the foster family home.

(d) The adult will be compatible with other residents of the foster family home.

(e) The child placing agency or approved governmental unit will periodically reevaluate the placement of an adult under this subsection to determine that the criteria for placement in subdivisions (a) through (d) continue to be met and document that the adult is receiving care consistent with the administrative rules for a child placing agency.

(8) The director of the department, or his or her designee, may authorize, on an exception basis, a licensed child placing agency or an approved governmental unit to place a child in an adult foster care family home or an adult foster care small group home licensed under Act No. 218 of the Public Acts of 1979 if the licensed child placing agency or approved governmental unit certifies to the department all of the following:

(a) The placement is in the best interests of the child.

(b) The placement has the concurrence of the parent or guardian of the child.

(c) The identified needs of the child can be met adequately by the adult foster care family home or small group home.

(d) The psychosocial and clinical needs of the child are compatible with those of other residents of the adult foster care family home or small group home.

(e) The clinical treatment of the child's condition is similar to that of the other residents of the adult foster care family home or small group home.

(f) The child's cognitive level is consistent with the cognitive level of the other residents of the adult foster care family home or small group home.

(g) The child is neurologically handicapped and is also physically limited to such a degree as to require complete physical assistance with mobility and activities of daily living.

(h) The child placing agency or approved governmental unit will periodically reevaluate the placement of a child under this subsection to determine that the criteria for placement in subdivisions (a) to (g) continue to be met.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1974, Act 191, Imd. Eff. July 2, 1974;--Am. 1978, Act 309, Imd. Eff. July 10, 1978;--Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;--Am. 1980, Act 232, Imd. Eff. July 20, 1980;--Am. 1980, Act 498, Imd. Eff. Jan. 2, 1981;--Am. 1980, Act 510, Imd. Eff. Jan. 26, 1981;--Am. 1981, Act 126, Imd. Eff. July 23, 1981;--Am. 1982, Act 329, Imd. Eff. Dec. 14, 1982;--Am. 1984, Act 42, Imd. Eff. Dec. 28, 1984;--Am. 1986, Act 169, Imd. Eff. July 7, 1986;--Am. 1989, Act 72, Imd. Eff. June 16, 1989;--Am. 1991, Act 162, Imd. Eff. Dec. 9, 1991;--Am. 1995, Act 81, Imd. Eff. June 15, 1995.

Constitutionality: The First and Fourteenth Amendments of the United States Constitution do not prevent the state from compelling the defendants to conform to the licensure requirements of the childcare organization act. Department of Social Services v. Emmanuel Baptist Preschool, 434 Mich. 380, 455 N.W.2d 1 (1990).

Administrative rules: R 400.1301 et seq., R 400.4101 et seq., R 400.5101 et seq., R 400.6101 et seq., R 400.11101 et seq. of the Michigan Administrative Code.

722.115a Providing records to children's ombudsman.

Sec.5a. A child placing agency shall provide the children's ombudsman created in section 3 of the children's ombudsman act with those records requested by the ombudsman pertaining to a matter under investigation by the ombudsman.

History: Add. 1994, Act 205, Eff. Jan. 1, 1995.

722.116 Evaluation of local and state government child care organizations; report; state funds.

Sec. 6. Local and state government child care organizations similar to those nongovernmental organizations required to be licensed pursuant to this act shall be evaluated and approved at least once every 2 years, using this act and rules promulgated there under for similar nongovernmental organizations licensed under this act. A report of the evaluation shall be furnished to the funding body for each child care organization. Unless child care organizations are approved, or provisionally approved, as meeting the appropriate administrative rules, state funds shall not be appropriated for their continued operation.

History: 1973, Act 116, Eff. Mar. 29, 1974.

722.117 Provisional license.

Sec. 7. A provisional license shall be issued to a new organization during the first 6 months of operation. At the end of the 6 months of operation, the department shall either issue a regular license or renew or refuse to renew the provisional license as provided in section 11. A provisional

license may be issued to a child care organization which is temporarily unable to conform to the rules. A provisional license shall expire 6 months from the date of issuance and may be issued not more than 4 times. The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable plan to overcome the deficiency present in the child care organization within the time limitations of the provisional licensing period.

History: 1973, Act 116, Eff. Mar. 29, 1974.

722.118 Regular license; duration; reinstatement; contents.

Sec. 8. A regular license shall be effective for 2 years after the date of issuance unless revoked pursuant to section 11 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated under this act. The license shall be reinstated biennially on application and approval. A license shall specify in general terms the kind of child care program the licensee may undertake, and the number, and ages of children that can be received and maintained.

History: 173, Act 116, Eff. Mar. 29, 1974;--Am. 1980, Act 32, Imd. Eff. Mar. 10, 1980;--Am. 1980, Act 232, Imd. Eff. July 20, 1980.

722.118a Assessment of foster family home or group home; certification; on-site evaluation.

Sec. 8a. (1) The department shall periodically assess a child care organization's continued compliance with this act and the rules promulgated under this act. The department shall make an on-site evaluation of a child care organization at least once a year.

(2) The department may authorize a licensed child placing agency or an approved governmental unit to periodically assess a licensed foster family home or a licensed foster family group home pursuant to subsection (1) and to certify that the foster family home or the foster family group home continues to comply with this act and the rules promulgated under this act. A periodic assessment of a licensed foster family home or a licensed foster family group home pursuant to this subsection may include an on-site evaluation of the child care organization.

History: Add. 1980, Act 32, Imd. Eff. Mar. 10, 1980.

722.119 Repealed. 1980, Act 232, Imd. Eff. July 20, 1980.

Compiler's note: The repealed section pertained to registration of family day care homes.

722.119a Certificate of registration; duration; renewal; contents; assessing compliance; on-site visits.

Sec. 9a. (1) A certificate of registration shall be in force for 3 years unless revoked pursuant to section 11. A renewal certificate of registration shall be issued in the same manner as provided in section 5(2) for the initial issuance of the certificate, except that an on-site visit of the family day

care home and the orientation session shall not be required. The certificate shall state that the registrant may operate a family day care home and the number and the ages of the children that may be received and maintained.

(2) This section shall not limit the right or the duty of the department to assess periodically, randomly, or at the time of renewal, the continued compliance with this act and rules promulgated under this act. The department shall make on-site visits as provided in this act to a 0% sample of the family day care homes in each county each year, or when a complaint about a family day care home or registrant is received by the department.

History: Add. 1980, Act 232, Imd. Eff. July 20, 1980.

722.120 Investigation and examination of conditions, books, records, and reports; visits regarding health or fire protection; records; report; forms; confidentiality; disclosure of information; availability of confidential records.

Sec. 10.(1) The department may investigate and examine conditions of a child care organization in which a licensee receives, maintains, or places out children, and may investigate and examine the books and records of the licensee. The licensee shall admit members of the department and furnish all reasonable facilities for thorough examination of its books, records, and reports. The department of public health, the fire marshal division of the department of state police, or local authorities, in carrying out the provisions of this act, may visit a child care organization to advise in matters affecting the health or fire protection of children.

(2) A licensee shall keep the records the department prescribes regarding each child in its control and care, and shall report to the department, when requested, the facts the department requires with reference to the children upon forms furnished by the department. Except as otherwise provided in this subsection, records regarding children and facts compiled about children and their parents and relatives are confidential and disclosure of this information shall be properly safeguarded by the child care organization, the department, and any other entity in possession of the information. Records that are confidential under this section are available to both of the following:

(a) A standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children, pursuant to section 7 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.627 of the Michigan Compiled Laws.

(b) The children's ombudsman created in section 3 of the children's ombudsman act.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1980, Act 498, Imd. Eff. Jan. 21, 1981;--Am. 1994, Act 205, Eff. Jan. 1, 1995.

722.120a Contribution.

Sec. 10a. (1) A child placing agency shall not solicit or accept a contribution from a prospective adoptive parent unless the contribution is equivalent in value to the cost of, and tendered as payment for, an adoption service actually performed for the prospective adoptive parent by the child placing agency.

(2) A child placing agency shall not give or offer to give an individual preferential treatment in connection with an adoption service in return for a contribution from or on behalf of that individual.

(3) As used in this section, "contribution" means the payment of money or donation of goods or services.

History: Add. 1994, Act 243, Eff. July 5, 1994.

722.121 Denial, revocation, or refusal to renew license or certificate of registration; modifying provisional status of license; grounds; notice; appeal; hearing; decision; protest; denial of license for noncompliance; complaint by legislative body of city, village, or township; procedure.

Sec. 11. (1) An original license shall not be granted under this act if the issuance of the license would substantially contribute to an excessive concentration of community residential facilities within a city, village, township, or county of this state.

(2) The department may deny, revoke, or refuse to renew a license or certificate of registration of a child care organization when the licensee, registrant, or applicant falsifies information on the application or wilfully and substantially violates this act, the rules promulgated under this act, or the terms of the license or certificate of registration. The department may modify to a provisional status a license of a child care organization when the licensee wilfully and substantially violates this act, the rules promulgated under this act, or the terms of the license. A license or a certificate of registration shall not be revoked, a renewal of a license or certificate of registration shall not be refused, an application for a license or a certificate of registration shall not be denied, or a regular license shall not be modified to a provisional status unless the licensee, registrant, or applicant is given notice in writing of the grounds of the proposed revocation, denial, modification, or refusal. If revocation, denial, modification, or refusal is appealed within 30 days after receipt of the notice by writing addressed to the director of the department, the director or a designated representative of the director shall conduct a hearing at which the licensee, registrant, or applicant may present testimony and confront witnesses. Notice of the hearing shall be given to the licensee, registrant, or applicant by personal service or delivery to the proper address by certified mail not less than 2 weeks before the date of the hearing. The decision of the director shall be made not more than 30 days after the hearing, and forwarded to the protesting party by certified mail not more than 10 days thereafter. If the proposed revocation, denial, modification, or refusal is not protested, the license or certificate of registration may be revoked or the application or the renewal of the license or certificate of registration refused.

(3) The department shall deny a license to a child caring institution or foster family group home which does not comply with section 16a of Act No. 83 of the Public Acts of 1943, as amended, being section 125.216a of the Michigan Compiled Laws, section 16a of Act No. 184 of

the Public Acts of 1943, as amended, being section 125.286a of the Michigan Compiled Laws, and section 3b of Act No. 207 of the Public Acts of 1921, as amended, being section 125.583b of the Michigan Compiled Laws.

(4) The legislative body of a city, village, or township in which a child caring institution or foster family group home is located may file a complaint with the department to have the organization's license suspended, denied, or revoked pursuant to the procedures outlined in this act and the rules promulgated under this act. The director of the department shall resolve the issues of the complaint within 45 days after the receipt of the complaint. Notice of the resolution of the issues shall be mailed by certified mail to the complainant and the licensee. Failure of the director of the department to resolve the issues of the complaint within 45 days after receipt of the complaint shall serve as a decision by the director to suspend, deny, or revoke the organization's license. If the decision to suspend, deny, or revoke the license or the resolution of the issues is protested by written objection of the complainant or licensee to the director of the department within 30 days after the suspension, denial, or revocation of the license or the receipt of the notice of resolution, the director of the department or a designated representative of the director shall conduct a hearing pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, at which the complainant and licensee may present testimony and cross-examine witnesses. The decision of the director of the department shall be mailed by certified mail to the complainant and the licensee. If the resolution of the issues by the director of the department is not protested within 30 days after receipt of the notice of the resolution, the resolution by the director of the department is final.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1976, Act 398, Eff. Mar. 31, 1977;--Am. 1980, Act 232, Imd. Eff. July 20, 1980.

722.121a Notice of location of new and existing licensed child caring institutions or foster family group homes.

Sec. 11a. The director of the department shall notify the clerk of the city, village, or township and the legislature of the location of new and existing licensed child caring institution or foster family group home within the boundaries of the cities, villages, and townships in this state. The notification for existing licensed organizations shall be given within 90 days after the effective date of this amendatory act and within 30 days after the licensing of a new organization.

History: Add. 1976, Act 398, Eff. Mar. 31, 1977.

722.122 Appeal.

Sec. 12. A person aggrieved by the decision of the director following a hearing under section 11 may, within 30 days after receipt of the decision, take an appeal to the circuit court for the county in which the person resides by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director of the department with a copy of the affidavit. The circuit court shall have jurisdiction to hear and determine the questions of law involved in the appeal. If the department prevails, the circuit court shall affirm the decision of the department; if the licensee,

registrant, or applicant prevails, the circuit court shall set aside the revocation, or order the issuance or renewal of the license or certificate of registration.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1980, Act 232, Imd. Eff. July 20, 1980.

722.123 Injunction.

Sec. 13. When there is a violation of this act or a rule promulgated thereunder, and the unlawful activity or condition of the child care organization is likely to result in serious harm to the children under care, the department may seek injunctive action against the child care organization in the circuit court through proceedings instituted by the attorney general on behalf of the department.

History: 1973, Act 116, Eff. Mar. 29, 1974.

722.124 Persons authorized to place child.

Sec. 14. Only a parent, guardian of the person of a child, a person related to a child by blood, marriage, or adoption, a licensed child placing agency, or a governmental unit may place a child in the control and care of a person. This section shall not be construed to prevent foster parents from placing foster children in temporary care pursuant to rules promulgated by the department.

History: 1973, Act 116, Eff. Mar. 29, 1974.

722.124a Consent to medical and surgical treatment of minor child; "routine, nonsurgical medical care" defined.

Sec. 14a. (1) A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.121 of the Michigan Compiled Laws, Act No. 288 of the Public Acts of 1939, as amended, being sections 710.21 to 712A.28 of the Michigan Compiled Laws, or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The department may also execute a written instrument investing a child care organization with authority to consent to routine, nonsurgical medical care of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.

(2) A parent or guardian of a minor child who voluntarily places the child in a child care organization shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The parent or guardian shall consent to routine, nonsurgical medical care.

(3) Only the minor child's parent or legal guardian shall consent to nonemergency, elective surgery for a child in foster care. If parental rights have been permanently terminated by court action, consent for nonemergency, elective surgery shall be given by the probate court or the agency having jurisdiction over the child.

(4) As used in this section, "routine, nonsurgical medical care" does not include contraceptive treatment, services, medication or devices.

History: Add. 1974, Act 191, Imd. Eff. July 2, 1974;--Am. 1984, Act 396, Eff. Mar. 29, 1985.

722.124b Definitions used in SS 722.124b, 722.124c, and 722.124d.

Sec. 14b. As used in this section and sections 14c and 14d:

(a) "Adoption attorney" means that term as defined in section 22 of the adoption code, being section 710.22 of the Michigan Compiled Laws.

(b) "Adoption code" means chapter X of Act No. 288 of the Public Acts of 1939, being sections 710.21 to 710.70 of the Michigan Compiled Laws.

(c) "Adoption facilitator" means a child placing agency or an adoption attorney who assists biological parents or guardians or prospective adoptive parents with adoptions pursuant to the adoption code.

(d) "Primary adoption facilitator" means the adoption facilitator in an adoption who files the court documents on behalf of the prospective adoptive parent.

(e) "Public information form" means a form described in section 14d that is completed by a primary adoption facilitator and maintained in a central clearinghouse by the department of social services for distribution pursuant to section 14d to individuals seeking information about adoption.

History: Add. 1994, Act 209, Eff. Jan. 1, 1995.

722.124c Filing of public information form by primary adoption facilitator; contents; authentication; applicability of section to certain adoptions.

Sec. 14c. (1) Not later than 10 days after the entry of an order of adoption pursuant to section 56 of the adoption code, being section 710.56 of the Michigan Compiled Laws, the primary adoption facilitator for that adoption shall file with the probate court a completed public information form setting forth information including costs connected with the adoption as prescribed by section 14d. The public information form shall be authenticated by verification under oath by the primary adoption facilitator, or, in the alternative, contain the following statement immediately above the date and signature of the facilitator: "I declare that this public information form has been examined by me and that its contents are true to the best of my information, knowledge, and belief."

(2) This section does not apply to a stepparent adoption, the adoption of a child related to the petitioner within the fifth degree by blood, marriage, or adoption, or an adoption in which the consent of a court or the department is required.

(3) Except as provided in subsection (2), this section applies to adoptions in which the order of adoption under section 56 of the adoption code is entered after the effective date of this section, including adoptions pending on the effective date of this section.

History: Add. 1994, Act 209, Eff. July 1, 1995.

722.124d Public information form; reporting nonconfidential information; detachable section; distribution of blank forms; acceptance and maintenance of completed forms; individual requests for information about adoption facilitators; sending nonconfidential portion in response to individual's request; fee.

Sec. 14d. (1) The department shall develop a public information form for the reporting of the following nonconfidential information:

(a) The name and address of the primary adoption facilitator.

(b) The type of adoption, as follows:

(i) Direct placement or agency placement.

(ii) Intrastate, interstate, or intercountry.

(c) The name of the agency and individual who performed the preplacement assessment or the investigation required under section 46 of the adoption code, being section 710.46 of the Michigan Compiled Laws, and the cost of the assessment or investigation.

(d) The name of each individual who performed counseling services for a biological parent, a guardian, or the adoptee; the individual's agency affiliation, if any; the number of hours of counseling performed; and the cost of that counseling.

(e) The name of each individual who performed counseling services for an adoptive parent, the individual's agency affiliation, if any, the number of hours of counseling performed, and the cost of that counseling.

(f) The total amount paid by an adoptive parent for hospital, nursing, or pharmaceutical expenses incurred by a biological parent or the adoptee in connection with the birth or any illness of the adoptee.

(g) The total amount paid by an adoptive parent for a biological mother's living expenses.

(h) The total amount paid by an adoptive parent for expenses incurred in ascertaining the information required under section 27 of the adoption code, being section 710.27 of the Michigan Compiled Laws.

(i) The name of any attorney representing an adoptive parent, the number of hours of service performed in connection with the adoption, and the total cost of the attorney's services performed for the adoptive parent.

(j) The name of any attorney representing a biological parent, the number of hours of service performed in connection with the adoption, and the total cost of the attorney's services performed for the biological parent.

(k) The name of any agency assisting a biological parent or adoptive parent, and the cost of all services provided by the agency other than services specifically described in subdivisions (c), (d), and (e).

(l) The total amount paid by an adoptive parent for a biological parent's travel expenses.

(m) Any fees or expenses sought but disallowed by the court.

(n) The total amount of all expenses connected with the adoption that were paid for by the adoptive parent.

(o) An explanation of any special circumstances that made costs of the adoption higher than would normally be expected.

(2) The public information form prescribed by subsection (1) shall contain a detachable section for the reporting of all of the following confidential information:

(a) The age, sex, and race of each biological parent.

(b) The age, sex, and race of the adoptee.

(c) The name, age, sex, and race of each adoptive parent.

(d) The county in which the final order of adoption was entered.

(e) The county, state, and country of origin of the adoptee.

(f) The legal residence of biological parents.

(g) The legal residence of adoptive parents.

(h) The dates of the following actions related to the adoption:

(i) The first contact of the birth parent with the primary adoption facilitator.

(ii) The first contact of the adoptive parent with the primary adoption facilitator.

(iii) The temporary placement, if applicable.

(iv) The formal placement.

(v) The order of the court finalizing the adoption.

(3) The department of social services shall distribute blank public information forms to adoption facilitators, courts, and other interested individuals and organizations.

(4) Beginning on July 1, 1995, the department of social services shall accept from the probate court of each county and maintain in a central clearinghouse completed public information forms for each adoption completed in this state. Upon the request of an individual seeking information about adoption facilitators serving a particular county or counties, the department shall send the individual a list of all adoption facilitators serving that county or those counties, the number of adoptions each person facilitated in the county or counties during the preceding 12 months, and the fees the department charges for transmitting copies of public information forms. Upon the individual's request for public information forms for a particular adoption facilitator or facilitators and payment of the required fees, the department shall send the individual copies of the nonconfidential portions of the public information forms completed by that adoption facilitator or those adoption facilitators during the preceding 12 months. If the number of adoptions facilitated by a particular adoption facilitator in a particular county or counties is insufficient to protect the confidentiality of the participants in an adoption, the department shall send the nonconfidential portions of additional public information forms for adoptions facilitated by that adoption facilitator in earlier years or in other counties. The additional forms required to protect confidentiality shall be sent without charge to the individual requesting the information.

(5) If the department receives public information forms completed by a probate register containing only the primary adoption facilitator's name and confidential information, the department shall send the nonconfidential portion of those public information forms completed by the probate register in response to an individual's request for public information forms for that adoption facilitator.

(6) The department may charge a fee for transmitting public information forms to individuals requesting them. The fee shall be sufficient to reimburse the department for the costs of copying, postage or facsimile, and labor.

History: Add. 1994, Act 209, Eff. Jan. 1, 1995;--Am. 1995, Act 107, Imd. Eff. June 23, 1995.

722.125 Violation as misdemeanor; penalty; conviction as ground for revocation of license or certificate of registration; effect of revocation, denial, or refusal to renew.

Sec. 15. (1) A person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization who violates this act is guilty of a misdemeanor, punishable by the following:

(a) A fine of not less than \$ 100.00 or more than \$ 1,000.00 for a violation of section 3b, 3c, or 3d.

(b) For a violation not described in subdivision (a), a fine of not less than \$ 100.00 or more than \$ 1,000.00, or imprisonment for not more than 90 days, or both.

(2) If a person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization is convicted under this act, the conviction is sufficient ground for the revocation of its license or certificate of registration, and the person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization convicted shall not be granted a license or certificate of registration, or be permitted to be connected, directly or indirectly, with a licensee or a registrant for a period of not less than 2 years after the conviction.

(3) A person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization who has a license or certificate of registration revoked, application denied, or renewal refused, may be refused a license or certificate of registration, or be prohibited from being connected, directly or indirectly, with a licensee or a registrant for a period of not less than 2 years after the revocation, denial, or refusal to renew.

History: 1973, Act 116, Eff. Mar. 29, 1974;--Am. 1980, Act 232, Imd. Eff. July 20, 1980;--Am. 1993, Act 218, Eff. Apr. 1, 1994.

722.126 Education of public.

Sec. 16. The department shall provide continuous education of the public in regard to the requirements of this act through the ongoing use of mass media and other methods as are deemed appropriate.

History: 1973, Act 116, Eff. Mar. 29, 1974.

722.127 Objection on religious grounds to medical examination, immunization, or treatment of child.

Sec. 17. Nothing in the rules adopted pursuant to this act shall authorize or require medical examination, immunization, or treatment for any child whose parent objects thereto on religious grounds.

History: 1973, Act 116, Eff. Mar. 29, 1974.

722.128 Repeal.

Sec. 18. Act No. 47 of the Public Acts of 1944, being sections 722.101 to 722.108 of the Compiled Laws of 1970, is repealed.

History: 1973, Act 116, Eff. Mar. 29, 1974.